

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF MICHIGAN
3 SOUTHERN DIVISION
4

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

CASE NO: 1:08-CR-274

8 ROBERTO ESPINOSA FARIAS,

9 Defendant.

10 _____/

11 * * * *

12 CHANGE OF PLEA HEARING

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14

15 BEFORE: THE HONORABLE PAUL L. MALONEY
 United States District Judge
16 Kalamazoo, Michigan
 April 18, 2011

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APPEARANCES:

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APPEARING ON BEHALF OF THE PLAINTIFF:

19

BRIAN P. LENNON
Assistant United States Attorney
P.O. Box 208
21 Grand Rapids, Michigan 49501-0208

22 APPEARING ON BEHALF OF THE DEFENDANT:

23 DONNA J. INNES
 707 Academy Street
24 Kalamazoo, Michigan 49007

25

KATHLEEN S. THOMAS, U.S. District Court Reporter
410 West Michigan Avenue, Kalamazoo, Michigan 49007
(269)385-3050

1 Kalamazoo, Michigan

2 April 18, 2011

3 at approximately 9:17 a.m.

4 PROCEEDINGS

5 THE COURT: This is 08-274; The United States of
6 America vs. Roberto Espinosa Farias. This matter is
7 before the Court for a change of plea proceeding.

8 The record should reflect that Assistant United
9 States Attorney Brian Lennon is here on behalf of the
10 government. Attorney Donna Innes is here on behalf of the
11 defendant. The defendant is present in person.

12 Miss Innes, welcome. I believe this is the first
13 time you've appeared before me.

14 MS. INNES: Yes, I have not been to the Kalamazoo
15 court.

16 THE COURT: Well, welcome.

17 MS. INNES: Thank you.

18 THE COURT: Miss Innes, as I understand it, your
19 client wishes to plead guilty to Count One pursuant to a
20 plea agreement with the government; is that correct?

21 MS. INNES: That is a correct statement, your Honor.

22 THE COURT: All right. Thank you.

23 Mr. Innes (sic. Farias), good morning, sir.

24 THE DEFENDANT: Good morning, sir.

25 THE COURT: Mr. Innes (sic. Farias), your lawyer--

1 MS. INNES: Farias.

2 THE COURT: Farias, I'm sorry.

3 Mr. Farias, your lawyer advises me that you wish to
4 plead guilty to Count One of the Indictment pursuant to an
5 agreement with the government; is that true?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right, sir. In order to take a plea
8 of guilty from you, I must place you under oath. Would
9 you raise your right hand.

10 ROBERTO ESPINOSA FARIAS - DEFENDANT - SWORN

11 THE COURT: Thank you.

12 Mr. Farias, how old are you, sir?

13 THE DEFENDANT: Fifty-seven.

14 THE COURT: And how far did you go in school?

15 THE DEFENDANT: How what?

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: I went to-- got a GED.

18 THE COURT: So you are able to read and write the
19 English language?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you taken any prescription
22 medication or any other substance which might affect your
23 ability to understand what is occurring here today?

24 THE DEFENDANT: No, sir, not now.

25 THE COURT: Do you understand what I'm saying to you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If at any time I say something you don't
3 understand, I want you to ask me questions. Do you
4 understand that?

5 THE DEFENDANT: I will, sir.

6 THE COURT: It's very important, sir, that you be
7 truthful here today. A false statement could subject you
8 to penalties for perjury or prosecution for false
9 statement. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Thank you.

12 Have you had ample opportunity of discussing the case
13 with your lawyer?

14 THE DEFENDANT: Yes.

15 THE COURT: And are you satisfied with her work and
16 representation of you?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: Do you understand, sir, you have the
19 absolute right to continue your plea of not guilty and
20 proceed to trial if that's what you want to do. Do you
21 understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: And obviously you would have the right to
24 have Miss Innes defend you throughout these proceedings.
25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Thank you.

3 Mr. Lennon, there is a plea agreement in this case.

4 MR. LENNON: Yes, your Honor. It was electronically
5 filed last Friday, your Honor.

6 THE COURT: Would you summarize it for the record,
7 please.

8 MR. LENNON: I will, your Honor. Thank you.

9 Your Honor, in Paragraph 1, the defendant agrees to
10 plead guilty to Count One of the Third Superceding
11 Indictment.

12 Paragraph 2 is simply an acknowledgment of the
13 elements of the offense by the defendant.

14 Paragraph 3, your Honor, sets forth the penalties in
15 this case.

16 And 4 is an acknowledgment by Mr. Farias that he
17 understands what supervised release is.

18 Paragraph 5 is entitled "Stipulations as to Facts and
19 Drug Quantity," but we have removed the drug quantity
20 stipulation, so it's really just a stipulation of facts.

21 And, your Honor, I would just put on the record that
22 Mr. Farias and the government agree, and it's uncontested,
23 that between the dates set forth in Count One of the Third
24 Superceding Indictment the defendant acquired over five
25 kilograms of cocaine in the State of California and

1 distributed the cocaine to co-defendants, Charles Jackson,
2 Sr., and Donnie Charles, a/k/a D.

3 Paragraph 5B says that on or about February 17, 2008,
4 in Carson, California, Co-defendant Donnie Charles
5 delivered approximately \$80,000 in U.S. currency to the
6 defendant, and that this money constituted payments for
7 five kilograms of cocaine.

8 And finally, 5C says while defendant has no personal
9 knowledge of how or to whom Charles Jackson, Sr., and
10 Donnie Charles further distributed the cocaine, he cannot
11 dispute the government's allegation this cocaine was
12 transported by others to the State of Michigan where it
13 was further distributed to both the Eastern and Western
14 Districts of Michigan as alleged in the Third Superceding
15 Indictment.

16 Paragraph 6 contains the promises made by my office.
17 First, we are not going to oppose his request for
18 acceptance of responsibility, provided he satisfies that
19 criteria. And we are confident that the adjusted offense
20 level will be over 16, your Honor, so we acknowledge it
21 would be a timely plea if he otherwise qualifies for
22 acceptance.

23 Second, we would not file notice of defendant's prior
24 felony drugs convictions, he has two we know of. If those
25 had been filed, Mr. Farias on a plea of guilty or

1 conviction on this count would be looking at mandatory
2 life without the possibility of release. We have not and
3 will not file those notices, provided Mr. Farias fulfills
4 his promises in the plea agreement and pleads guilty
5 today.

6 We are also not going to charge him with any
7 additional crimes, provided he-- arising out of his drug
8 trafficking here in this district, provided we hear about
9 those crimes from him or his attorney prior to the date of
10 sentencing. This promise of non-prosecution doesn't
11 include crimes he has not told us about or crimes of
12 violence or criminal tax violations.

13 We are also agreeing not to call him as a witness in
14 the government's case in chief. As the Court is aware,
15 one of the remaining co-defendants is the defendant's son,
16 Roberto Juan Farias, Jr.

17 The defendant has agreed to the following: He is
18 agreeing to consent to the forfeiture of all of the
19 property listed in the Third Superceding Indictment. We
20 are not aware of-- I'm not aware that we took any
21 vehicles, accounts, or real estate, or personal property
22 belonging to the defendant, but just so that he can't make
23 a claim to have an interest in any of that property. He
24 is also agreeing to a complete waiver, if you will, of the
25 direct appeal and collateral attack rights. Obviously, if

1 the sentence were over the maximum or was-- he was
2 sentenced for any reason that was unconstitutional, he
3 would have that basis, but otherwise it is a complete
4 waiver of his appellate rates.

5 And then Paragraph 8 essentially acknowledges the
6 guidelines will be consulted.

7 Paragraph 9 of the waiver of his constitutional
8 rights by pleading guilty.

9 Paragraph 10 says that the Court is not a party to
10 this agreement, is not bound by any of the recommendations
11 or stipulations.

12 Paragraph 11 limits this agreement to my office.

13 Paragraph 12 outlines the consequences if the
14 defendant were to breach any of the provisions of the
15 agreement.

16 And then there was a deadline for acceptance of the
17 agreement, which was met by the parties.

18 And finally, the agreement acknowledgment that
19 Mr. Farias entered into this knowingly and voluntarily and
20 no other promises or conditions other than those put on
21 the record, and I know of no other promises other than
22 those contained in this agreement, your Honor.

23 THE COURT: Thank you, Mr. Lennon.

24 Miss Innes, is the written plea agreement the
25 totality of the plea agreement?

1 MS. INNES: Yes, it is, your Honor.

2 THE COURT: All right. Thank you.

3 Mr. Farias, I take it, sir, you have had ample
4 opportunity of reviewing the plea agreement with your
5 lawyer; is that correct?

6 THE DEFENDANT: Yes.

7 THE COURT: And you've signed the plea agreement; is
8 that correct?

9 THE DEFENDANT: Yes, I did.

10 THE COURT: You wish to have the benefit of the
11 agreement?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions about your
14 obligations under the agreement?

15 THE DEFENDANT: No, sir.

16 THE COURT: And, I guess, you signed this agreement
17 last Thursday; is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And that was after full consultation with
20 your lawyer?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Thank you, sir.

23 And you are entering into the agreement freely and
24 voluntarily; is that right?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. Thank you.

2 All right. Mr. Espinosa, I will now set forth the
3 charge contained in Count One of the Third Superceding
4 Indictment which is as follows:

5 It's alleged that beginning on or about an unknown
6 date in the middle 1990s, and continuing through on or
7 about an unknown date in 2009, in the Southern Division of
8 the Western District of Michigan, and elsewhere, you and
9 the other named defendants did combine, conspire,
10 confederate, and agree and with Alvin Keith Jackson, Emond
11 Durea Logan, Charles Jackson, Jr., Donnie Charles, Lindell
12 Brown, Felicia Blake, Tamara Hughes, Kevin Emerson, also
13 known as Kenneth Coleman, and other persons both known and
14 unknown to the grand jury, to knowingly and intentionally
15 and unlawfully distribute and possess with intent to
16 distribute five kilograms or more of a mixture or
17 substance containing a detectable amount of cocaine, a
18 Schedule II controlled substance. Do you understand the
19 charge, sir?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that the maximum term
22 of imprisonment for this offense is life?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And if you plead guilty, and I accept
25 your plea, I will have to impose a sentence of at least

1 ten years imprisonment. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: The maximum fine is \$4 million. Do you
4 understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: In terms of a period of supervised
7 release, which is a term of supervision after you complete
8 your term of imprisonment, the Court must assess at least
9 five years of supervised release, and I could put you on
10 supervised release for the remainder of your life. Do you
11 understand?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: The Court will be obligated to impose a
14 special assessment of \$100 if you're convicted of this
15 offense. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: There are forfeiture allegations in the
18 Indictment, and pursuant to the plea agreement, you have
19 agreed not to contest any of the allegations of
20 forfeiture. Do you understand?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, if you plead guilty, and I accept
23 your plea, the Court will order a presentence report in
24 the case. Part of that presentence report will be the
25 calculation of the advisory sentencing guidelines that

1 pertain to your case. Those guidelines are advisory to
2 the Court, I can go above them, I can go below them, I can
3 stay within the guidelines. They are advisory to the
4 Court, but I can depart upward, I can depart downward, and
5 I can vary from the guidelines as well based on the
6 sentencing factors contained in the appropriate statutes.
7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Have you been over that with your lawyer?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right, sir.

12 How do you wish to plead to Count One of the Third
13 Superceding Indictment?

14 THE DEFENDANT: Guilty.

15 THE COURT: Do you understand, sir, that if you plead
16 guilty and I accept your plea, you will not have a trial
17 of any kind. Do you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: You have the absolute right to a jury
20 trial of 12 persons or the right to be tried by a judge
21 alone, without a jury. These rights you give up if you
22 plead guilty. Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You have the right to be presumed
25 innocent of this offense until the government proves

1 beyond a reasonable doubt that you are guilty. These
2 rights you give up if you plead guilty. Do you
3 understand?

4 THE DEFENDANT: Yes.

5 THE COURT: You would have the right through your
6 lawyer to question and cross examine the witnesses the
7 government calls in support of their case, that is your
8 right of confrontation or cross examination. This right
9 you give up if you plead guilty. Do you understand?

10 THE DEFENDANT: Yes, sir, your Honor.

11 THE COURT: At the trial, you would have the right to
12 call witnesses on your behalf, to subpoena those witnesses
13 into court through the subpoena power of the Court to
14 compel their attendance, and to present any other evidence
15 that you have for your defense. These rights you give up
16 also if you plead guilty. Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: You would have the right to testify at
19 the trial if you wanted to, on the other hand, you have
20 the absolute right to remain silent, and that silence
21 could not be used against you in any way. Do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: The government could not call you as a
25 witness in your own case. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: That's your right against compelled self
3 incrimination. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand, sir, that by pleading
6 guilty you'll be forever giving up your right to a trial
7 and all the other rights that we have talked about?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: If I accept your guilty plea, this will
10 result in a conviction of the offense and the Court will
11 be obligated to sentence you for that violation. Do you
12 understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has anybody threatened or forced you or
15 coerced you into pleading guilty?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have there been any promises of leniency
18 or benefit, other than those contained in the plea
19 agreement?

20 THE DEFENDANT: No, sir.

21 THE COURT: Has anybody predicted what your sentence
22 might be if you plead guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Are you pleading guilty freely and
25 voluntarily, and because you are, in fact, guilty of the

1 crime?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: Do you understand, sir, that your plea
4 agreement contains a waiver of your right to appeal and to
5 collaterally attack your conviction. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: In other words, unless I sentence you
9 above the statutory maximum or on some unconstitutional
10 factor, such as race or gender or something of that
11 nature, you are not going to have a right to appeal my
12 sentence. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you are not going to have the right
15 to appeal any other-- based on any other possible ground
16 other than the ones that are contained in the plea
17 agreement. Do you understand?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: All right, sir. Tell me what you did
20 that leads you to believe that you are guilty of this
21 offense. But obviously you're charged with conspiracy,
22 and it's alleged that the conspiracy began sometime in the
23 middle 1990s and continued through on or about an unknown
24 date in 2009, in the Southern Division of the Western
25 District of Michigan; is that true?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, sir. What did you do that
3 leads you to believe that you are guilty of this offense?

4 THE DEFENDANT: What I did?

5 THE COURT: What did you do?

6 THE DEFENDANT: Well, I used to get cocaine and give
7 it to Donnie.

8 THE COURT: You got cocaine from some source; is that
9 correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you gave it to who?

12 THE DEFENDANT: Donnie Charles. I just give it to
13 him, but I didn't know about all of those people that's in
14 the paper.

15 THE COURT: So you gave it to one person?

16 THE DEFENDANT: Yes.

17 THE COURT: Charles. Would that be Charles Jackson?

18 THE DEFENDANT: Donnie Charles.

19 THE COURT: Oh, Donnie Charles, I'm sorry, I
20 misunderstand you.

21 You gave the cocaine to Donnie Charles?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And so you and he agreed that you were
24 going to traffic in cocaine together?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And was this in an amount greater than
2 five kilograms?

3 THE DEFENDANT: Yes, sir. Because in those days, I
4 was using cocaine real heavily.

5 THE COURT: You were using cocaine yourself?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So you decided to traffic in cocaine to
8 get money; is that correct?

9 THE DEFENDANT: Yes, to buy for me or you know.

10 THE COURT: So you might have gotten a cut of the
11 cocaine, is that what I hear you saying?

12 THE DEFENDANT: Yes.

13 THE COURT: You got some of the cocaine that you--

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. And there's no question in your
16 mind this was cocaine; is that right?

17 THE DEFENDANT: Yes, it was cocaine.

18 THE COURT: And you knew it was illegal to do this?

19 THE DEFENDANT: Yes, I do, sir.

20 THE COURT: But you did it anyway?

21 THE DEFENDANT: I did it because I was real under the
22 influence.

23 THE COURT: All right. But you knew what you were
24 doing, correct?

25 THE DEFENDANT: Yes.

1 THE COURT: No question about that?

2 THE DEFENDANT: No question, sir.

3 THE COURT: All right. And it's contained in the
4 plea agreement that you do not contest the fact that more
5 than five kilograms of this cocaine got to the State of
6 Michigan; is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: It's also contained in the plea agreement
9 that on or about February 17, 2008, in Carson, California,
10 a Co-defendant Charles delivered approximately \$80,000 in
11 U.S. currency to you; is that correct?

12 THE DEFENDANT: Donnie Charles, sir.

13 THE COURT: Donnie Charles gave you \$80,000?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And that was payment for five kilograms
16 of cocaine; is that right?

17 THE DEFENDANT: Yes.

18 THE COURT: So Mr. Donnie Charles was the only
19 co-conspirator that you had contact with; is that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Lennon, satisfied with the facts?

22 MR. LENNON: I am, your Honor. But for
23 clarification, could I ask a couple questions?

24 THE COURT: Sure.

25 MR. LENNON: Mr. Farias, on some of the times when

1 you delivered the cocaine to Donnie Charles, was there
2 another black man with him?

3 THE DEFENDANT: Sometimes, but he wasn't there-- but
4 I just talk to Donnie Charles.

5 MR. LENNON: You just dealt with Donnie Charles?

6 THE DEFENDANT: Yes.

7 MR. LENNON: But sometimes you saw another black man
8 there?

9 THE DEFENDANT: In the car, yes.

10 MR. LENNON: You were informed that was indeed
11 Charles Jackson, Sr.?

12 THE DEFENDANT: No.

13 MR. LENNON: Did you learn that from any of the
14 agents or anything?

15 THE DEFENDANT: No.

16 MR. LENNON: And then would you have any reason to
17 dispute that it was Charles Jackson, Sr., who was with
18 Donnie Charles on those occasions?

19 THE DEFENDANT: No.

20 MR. LENNON: No reason to dispute that?

21 THE DEFENDANT: No, I don't really know it was him or
22 not.

23 MR. LENNON: Because you dealt with Donnie Charles?

24 THE DEFENDANT: Just with Donnie Charles.

25 MR. LENNON: Now, on that delivery of the \$80,000

1 cash by Donnie Charles?

2 THE DEFENDANT: Uh-huh.

3 MR. LENNON: There was a black female with him, was
4 there not?

5 THE DEFENDANT: Yes, black female.

6 MR. LENNON: Black female?

7 THE DEFENDANT: Female.

8 MR. LENNON: And would you have any reason to dispute
9 that's Co-defendant Regina Cawthorne-Shariff?

10 THE DEFENDANT: No.

11 MR. LENNON: Because you don't know who she was?

12 THE DEFENDANT: I didn't know who it was.

13 MR. LENNON: You just dealt hand-to-hand with Donnie
14 Charles?

15 THE DEFENDANT: Just with Donnie Charles.

16 MR. LENNON: Thank you for clarifying.

17 THE COURT: Miss Innes, satisfied with the facts?

18 MS. INNES: I am, your Honor.

19 THE COURT: Thank you.

20 The Court is also so satisfied. I find the plea to
21 be freely and voluntarily entered without promises of
22 leniency or benefit except as contained in the plea
23 agreement.

24 The Court finds no evidence of coercion.

25 The Indictment as to Count One factually accurate. I

1 should say, the Third Superseding Indictment is factually
2 accurate as to this defendant.

3 The defendant is actually guilty of the violation. I
4 accept the plea of guilty and he stands convicted
5 thereof.

6 A presentence report is ordered. Sentencing date
7 will be noticed. The Court orders the preparation of a
8 presentence report. And in the meantime, the defendant
9 will be remanded to the custody of the marshal to await
10 sentencing.

11 Anything further, Mr. Lennon?

12 MR. LENNON: No, your Honor. Thank you.

13 THE COURT: Miss Innes?

14 MS. INNES: No, your Honor. Thank you.

15 THE COURT: Thank you.

16 COURT CLERK: All rise, please.

17 Court is in recess.

18 (At 9:37 a.m., proceedings were concluded.)

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REPORTER'S CERTIFICATE

I, Kathleen S. Thomas, Official Court Reporter for
the United States District Court for the Western District
of Michigan, appointed pursuant to the provisions of Title
28, United States Code, Section 753, do hereby certify
that the foregoing is a true and correct transcript of
proceedings had in the within-entitled and numbered cause
on the date hereinbefore set forth; and I do further
certify that the foregoing transcript has been prepared by
me or under my direction.

/s/

Kathleen S. Thomas, CSR-1300, RPR
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